

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MBC File No. 12-2011-215239

DALE GENJI ANDO, M.D.

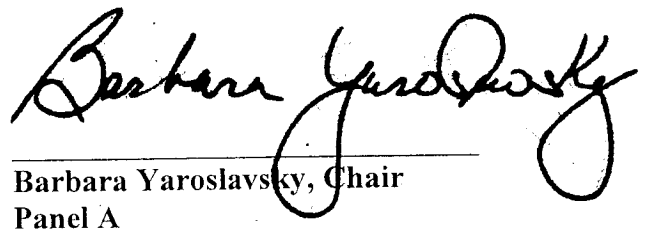
Respondent.

**ORDER CORRECTING CLERICAL ERROR IN**  
**"LICENSE NUMBER" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "license number" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the license number will conform to the Board's issued license.

IT IS HEREBY ORDERED that the license number contained on the Decision Order Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "G 50003".

November 28, 2012

  
Barbara Yaroslavsky, Chair  
Panel A

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
	)	
DALE GENJI ANDO, M.D.	)	Case No. 12-2011-215239
	)	
Physician's and Surgeon's	)	
Certificate No. A 24538	)	
	)	
Respondent.	)	
_____	)	

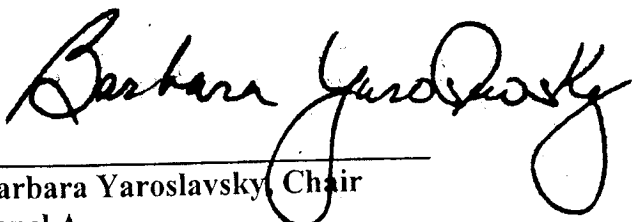
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on December 26, 2012.

IT IS SO ORDERED November 26, 2012.

MEDICAL BOARD OF CALIFORNIA

By:   
Barbara Yaroslavsky, Chair  
Panel A

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 RUSSELL W. LEE  
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7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 12-2011-215239

13 **DALE GENJI ANDO, M.D.**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 **159 Venado Corte**  
15 **Walnut Creek, CA 94598**

16 **Physician and Surgeon No. G 50003**

17 **Respondent.**

18 In the interest of a prompt and speedy settlement of this matter, consistent with the  
19 public interest and the responsibility of the Medical Board of California of the Department of  
20 Consumer Affairs ("the Board"), the parties hereby agree to the following Stipulated Settlement  
21 and Disciplinary Order which will be submitted to the Board for approval and adoption as the  
22 final disposition of the Accusation.

23 **PARTIES**

24 1. At the time of the filing of the Accusation, Linda K. Whitney (Complainant)  
25 was the Executive Director of the Medical Board of California. She brought this action solely  
26 in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of  
27 the State of California, by Russell W. Lee, Deputy Attorney General.

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2. Respondent DALE GENJI ANDO, M.D. ("Respondent" or "Dr. Ando") is represented in this proceeding by attorney Carol M. Langford, Esq., 100 Pringle Avenue, Suite 570, Walnut Creek, CA 94596.

3. On or about June 1, 1983, the Medical Board of California issued Physician and Surgeon's Certificate Number G 50003 to Respondent. The Physician and Surgeon Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

## JURISDICTION

4. Accusation No. 12-2011-215239 was filed before the Board on August 30, 2012, and is currently pending against Respondent. The Accusation together with all other statutorily required documents were properly served on Respondent in accordance with the California Administrative Procedure Act, and Respondent timely filed his Notice of Defense contesting the Accusation.

A copy of the Accusation is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the nature of the charges and allegations in the Accusation and the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent agrees that, at an administrative hearing, complainant could establish  
3 a prima facie case with respect to the charges and allegations contained in Accusation No.  
4 12-2011-215239, a true and correct copy of which is attached hereto as Attachment "A," and that  
5 he has thereby subjected his Physician's and Surgeon's Certificate No. G 50003 to disciplinary  
6 action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth  
7 in the Disciplinary Order below.

8 RESERVATION

9 9. The admissions made by Respondent herein are only for the purposes of  
10 this proceeding, or any other proceedings in which the Medical Board of California or other  
11 professional licensing agency is involved, and shall not be admissible in any other criminal  
12 or civil proceeding.

13 CONTINGENCY

14 10. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the  
15 Board. Respondent understands and agrees that the Board's staff and counsel for Complainant  
16 may communicate directly with the Board regarding this Stipulated Settlement and Disciplinary  
17 Order, without notice to or participation by Respondent or his counsel. If the Board fails to adopt  
18 this Stipulated Settlement and Disciplinary Order as its Order, the Stipulated Settlement and  
19 Disciplinary Order, except for this paragraph, shall be of no force or effect. The Stipulated  
20 Settlement and Disciplinary Order shall be inadmissible in any legal action between the parties,  
21 and the Board shall not be disqualified from further action by having considered this matter.

22 11. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary  
23 Order, including facsimile signatures on it, shall have the same force and effect as the original.

24 12. In consideration of the foregoing admissions and stipulations, the parties agree that  
25 the Board shall, without further notice or formal proceeding, issue and enter the following  
26 Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician and Surgeon Certificate No. G 50003 issued  
3 to Respondent DALE GENJI ANDO, M.D. (Respondent) is revoked. However, the revocation  
4 is stayed and Respondent is placed on probation for five (5) years on the following terms  
5 and conditions.

6 1. **CONTROLLED SUBSTANCES – ABSTAIN FROM USE:**

7 Respondent shall abstain completely from the personal use or possession of controlled  
8 substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as  
9 defined by Business and Professions Code section 4022, and any drugs requiring a prescription.  
10 This prohibition does not apply to medications lawfully prescribed to respondent by another  
11 practitioner for a bona fide illness or condition.

12 Within 15 calendar days of receiving any lawfully prescribed medications, respondent  
13 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone  
14 number; medication name, strength, and quantity; and issuing pharmacy name, address, and  
15 telephone number.

16 If respondent has a confirmed positive biological fluid test for any substance (whether  
17 or not legally prescribed) and has not reported the use to the Board or its designee, respondent  
18 shall receive a notification from the Board or its designee to immediately cease the practice of  
19 medicine. The respondent shall not resume the practice of medicine until final decision on  
20 an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke  
21 probation shall be filed by the Board within 15 days of the notification to cease practice. If the  
22 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board  
23 shall provide the respondent with a hearing within 30 days of the request, unless the respondent  
24 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or  
25 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice  
26 shall not apply to the reduction of the probationary time period.

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1 If the Board does not file an accusation or petition to revoke probation within 15 days  
2 of the issuance of the notification to cease practice or does not provide respondent with a hearing  
3 within 30 days of such a request, the notification of cease practice shall be dissolved.

4 2. ALCOHOL – ABSTAIN FROM USE:

5 Respondent shall abstain completely from the use of products or beverages containing  
6 alcohol.

7 If respondent has a confirmed positive biological fluid test for alcohol, respondent  
8 shall receive a notification from the Board or its designee to immediately cease the practice of  
9 medicine. The respondent shall not resume the practice of medicine until final decision on an  
10 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke  
11 probation shall be filed by the Board within 15 days of the notification to cease practice. If the  
12 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board  
13 shall provide the respondent with a hearing within 30 days of the request, unless the respondent  
14 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or  
15 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice  
16 shall not apply to the reduction of the probationary time period.

17 If the Board does not file an accusation or petition to revoke probation within 15 days  
18 of the issuance of the notification to cease practice or does not provide respondent with a hearing  
19 within 30 days of such a request, the notification of cease practice shall be dissolved.

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1           3.    BIOLOGICAL FLUID TESTING:

2           Respondent shall immediately submit to biological fluid testing, at respondent's expense,  
3 upon request of the Board or its designee. "Biological fluid testing" may include, but is not  
4 limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by  
5 the Board or its designee. Prior to practicing medicine, respondent shall contract with a  
6 laboratory or service approved in advance by the Board or its designee that will conduct random,  
7 unannounced, observed, biological fluid testing. The contract shall require results of the tests to  
8 be transmitted by the laboratory or service directly to the Board or its designee within four hours  
9 of the results becoming available. Respondent shall maintain this laboratory or service contract  
10 during the period of probation.

11           A certified copy of any laboratory test result may be received in evidence in any  
12 proceedings between the Board and respondent.

13           If respondent fails to cooperate in a random biological fluid testing program within  
14 the specified time frame, respondent shall receive a notification from the Board or its designee  
15 to immediately cease the practice of medicine. The respondent shall not resume the practice  
16 of medicine until final decision on an accusation and/or a petition to revoke probation.  
17 An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of  
18 the notification to cease practice. If the respondent requests a hearing on the accusation and/or  
19 petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days  
20 of the request, unless the respondent stipulates to a later hearing. A decision shall be received  
21 from the Administrative Law Judge or the Board within 15 days unless good cause can be  
22 shown for the delay. The cessation of practice shall not apply to the reduction of the probationary  
23 time period.

24           If the Board does not file an accusation or petition to revoke probation within 15 days  
25 of the issuance of the notification to cease practice or does not provide respondent with a hearing  
26 within 30 days of such a request, the notification of cease practice shall be dissolved.

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1           4.     PROFESSIONALISM PROGRAM (ETHICS COURSE):

2           Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a  
3 professionalism program, that meets the requirements of Title 16, California Code of Regulations  
4 (CCR) section 1358. Respondent shall participate in and successfully complete that program.  
5 Respondent shall provide any information and documents that the program may deem pertinent.  
6 Respondent shall successfully complete the classroom component of the program not later  
7 than six (6) months after respondent's initial enrollment, and the longitudinal component of the  
8 program not later than the time specified by the program, but no later than one (1) year after  
9 attending the classroom component. The professionalism program shall be at respondent's  
10 expense and shall be in addition to the Continuing Medical Education (CME) requirements  
11 for renewal of licensure.

12           A professionalism program taken after the acts that gave rise to the charges in the  
13 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
14 or its designee, be accepted towards the fulfillment of this condition if the program would have  
15 been approved by the Board or its designee had the program been taken after the effective date of  
16 this Decision.

17           Respondent shall submit a certification of successful completion to the Board or its  
18 designee not later than 15 calendar days after successfully completing the program or not later  
19 than 15 calendar days after the effective date of the Decision, whichever is later.

20           5.     PSYCHOTHERAPY:

21           Within 60 calendar days of the effective date of this Decision, respondent shall submit  
22 to the Board or its designee for prior approval the name and qualifications of a California-licensed  
23 board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology  
24 and at least five years of postgraduate experience in the diagnosis and treatment of emotional  
25 and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy  
26 treatment, including any modifications to the frequency of psychotherapy, until the Board  
27 or its designee deems that no further psychotherapy is necessary.

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1 The psychotherapist shall consider any information provided by the Board or its designee  
2 and any other information the psychotherapist deems relevant and shall furnish a written  
3 evaluation report to the Board or its designee. Respondent shall cooperate in providing the  
4 psychotherapist any information and documents that the psychotherapist may deem pertinent.

5 Respondent shall have the treating psychotherapist submit quarterly status reports to the  
6 Board or its designee. The Board or its designee may require respondent to undergo psychiatric  
7 and/or medical evaluations by a Board-appointed board certified psychiatrist(s) and/or other  
8 physician (s). If, prior to the completion of probation, respondent is found to be mentally or  
9 physically unfit to resume the practice of medicine without restrictions, the Board shall retain  
10 continuing jurisdiction over respondent's license and the period of probation shall be extended  
11 until the Board determines that respondent is mentally and physically fit to resume the practice  
12 of medicine without restrictions.

13 Respondent shall pay the cost of all psychotherapy and psychiatric and medical evaluations.

14 6. MONITORING – PRACTICE:

15 Prior to respondent engaging in the active clinical practice of medicine on patients,  
16 respondent shall submit to the Board or its designee for prior approval as a practice monitor,  
17 the name and qualifications of one or more licensed physicians and surgeons whose licenses  
18 are valid and in good standing, and who are preferably American Board of Medical Specialties  
19 (ABMS) certified. A monitor shall have no prior or current business or personal relationship  
20 with respondent, or other relationship that could reasonably be expected to compromise the  
21 ability of the monitor to render fair and unbiased reports to the Board, including but not limited to  
22 any form of bartering, shall be in respondent's field of practice, and must agree to serve as  
23 respondent's monitor. Respondent shall pay all monitoring costs.

24 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
25 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
26 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
27 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
28 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees

1 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
2 signed statement for approval by the Board or its designee.

3 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
4 probation, respondent's practice shall be monitored by the approved monitor. Respondent shall  
5 make all records available for immediate inspection and copying on the premises by the monitor  
6 at all times during business hours and shall retain the records for the entire term of probation.

7 If respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
8 date of this Decision, respondent shall receive a notification from the Board or its designee to  
9 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
10 shall cease the practice of medicine until a monitor is approved to provide monitoring  
11 responsibility.

12 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
13 includes an evaluation of respondent's performance, indicating whether respondent's practices are  
14 within the standards of practice of medicine, and whether respondent is practicing medicine  
15 safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that  
16 the monitor submits the quarterly written reports to the Board or its designee within 10 calendar  
17 days after the end of the preceding quarter.

18 If the monitor resigns or is no longer available, respondent shall, within 5 calendar days  
19 of such resignation or unavailability, submit to the Board or its designee, for prior approval,  
20 the name and qualifications of a replacement monitor who will be assuming that responsibility  
21 within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within  
22 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive  
23 a notification from the Board or its designee to cease the practice of medicine within three  
24 (3) calendar days after being so notified Respondent shall cease the practice of medicine  
25 until a replacement monitor is approved and assumes monitoring responsibility.

26 In lieu of a monitor, respondent may participate in a professional enhancement program  
27 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the  
28 University of California, San Diego School of Medicine, that includes, at minimum, quarterly

1 chart review, semi-annual practice assessment, and semi-annual review of professional growth  
2 and education. Respondent shall participate in the professional enhancement program at  
3 respondent's expense during the term of probation.

4 It is stipulated and agreed that respondent's current position in medical research at  
5 Sangamo Biosciences, Inc., shall not require a monitor as set forth herein.

6 STANDARD CONDITIONS

7 7. NOTIFICATION:

8 Within seven (7) days of the effective date of this Decision, the respondent shall provide  
9 a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at  
10 every hospital where privileges or membership are extended to respondent, at any other facility  
11 where respondent engages in the practice of medicine, including all physician and locum tenens  
12 registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier  
13 which extends malpractice insurance coverage to respondent. Respondent shall submit proof of  
14 compliance to the Board or its designee within 15 calendar days.

15 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

16 8. SUPERVISION OF PHYSICIAN ASSISTANTS:

17 During probation, respondent is prohibited from supervising physician assistants.

18 9. OBEY ALL LAWS:

19 Respondent shall obey all federal, state and local laws, all rules governing the practice of  
20 medicine in California and remain in full compliance with any court ordered criminal probation,  
21 payments, and other orders.

22 10. QUARTERLY DECLARATIONS:

23 Respondent shall submit quarterly declarations under penalty of perjury on forms provided  
24 by the Board, stating whether there has been compliance with all the conditions of probation.  
25 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
26 of the preceding quarter.

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1        11.    GENERAL PROBATION REQUIREMENTS:

2        Compliance with Probation Unit Respondent shall comply with the Board's probation unit  
3 and all terms and conditions of this Decision.

4        •    Address Changes:

5        Respondent shall, at all times, keep the Board informed of respondent's business  
6 and residence addresses, email address (if available), and telephone number. Changes of such  
7 addresses shall be immediately communicated in writing to the Board or its designee.  
8 Under no circumstances shall a post office box serve as an address of record, except as allowed  
9 by Business and Professions Code section 2021(b).

10       •    Place of Practice:

11       Respondent shall not engage in the practice of medicine in respondent's or patient's place  
12 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
13 facility.

14       •    License Renewal:

15       Respondent shall maintain a current and renewed California physician's and surgeon's  
16 license.

17       •    Travel or Residence Outside California:

18       Respondent shall immediately inform the Board or its designee, in writing, of travel  
19 to any areas outside the jurisdiction of California which lasts, or is contemplated to last,  
20 more than thirty (30) calendar days.

21       In the event respondent should leave the State of California to reside or to practice  
22 respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates  
23 of departure and return.

24       12.    INTERVIEW WITH THE BOARD OR ITS DESIGNEE:

25       Respondent shall be available in person upon request for interviews either at respondent's  
26 place of business or at the probation unit office, with or without prior notice throughout the term  
27 of probation.

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1           13.   NON-PRACTICE WHILE ON PROBATION:

2           Respondent shall notify the Board or its designee in writing within 15 calendar days of any  
3 periods of non-practice lasting more than 30 calendar days and within 15 calendar days of  
4 respondent's return to practice. Non-practice is defined as any period of time respondent is not  
5 practicing medicine in California as defined in Business and Professions Code sections 2051 and  
6 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching,  
7 or other activity as approved by the Board. All time spent in an intensive training program which  
8 has been approved by the Board or its designee shall not be considered non-practice. Practicing  
9 medicine in another state of the United States or Federal jurisdiction while on probation with  
10 the medical licensing authority of that state or jurisdiction shall not be considered non-practice.  
11 A Board-ordered suspension of practice shall not be considered as a period of non-practice.

12           In the event respondent's period of non-practice while on probation exceeds 18 calendar  
13 months, respondent shall successfully complete a clinical training program that meets the criteria  
14 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
15 Disciplinary Guidelines" prior to resuming the practice of medicine. Respondent's period of  
16 non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not  
17 apply to the reduction of the probationary term.

18           Periods of non-practice will relieve respondent of the responsibility to comply with the  
19 probationary terms and conditions with the exception of this condition and the following terms  
20 and conditions of probation: Obey All Laws; and General Probation Requirements.

21           It is further stipulated and agreed that respondent's current position with a biotechnology  
22 company involves working with a clinical team that performs clinical trials of investigational  
23 new agents being developed by the company and that said duties constitute the practice of  
24 medicine under this provision.

25           14.   COMPLETION OF PROBATION:

26           Respondent shall comply with all financial obligations (e.g., restitution, probation costs)  
27 not later than 120 calendar days prior to the completion of probation. Upon successful  
28 completion of probation, respondent's certificate shall be fully restored.

1           15.   VIOLATION OF PROBATION:

2           Failure to fully comply with any term or condition of probation is a violation of probation.  
3   If respondent violates probation in any respect, the Board, after giving respondent notice and the  
4   opportunity to be heard, may revoke probation and carry out the disciplinary order that was  
5   stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order  
6   is filed against respondent during probation, the Board shall have continuing jurisdiction until  
7   the matter is final, and the period of probation shall be extended until the matter is final.

8           16.   LICENSE SURRENDER:

9           Following the effective date of this Decision, if respondent ceases practicing due  
10   to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of  
11   probation, respondent may request to surrender his or her license. The Board reserves the right to  
12   evaluate respondent's request and to exercise its discretion in determining whether or not to grant  
13   the request, or to take any other action deemed appropriate and reasonable under the  
14   circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar  
15   days deliver respondent's wallet and wall certificate to the Board or its designee and respondent  
16   shall no longer practice medicine. Respondent will no longer be subject to the terms and  
17   conditions of probation. If respondent re-applies for a medical license, the application shall be  
18   treated as a petition for reinstatement of a revoked certificate.

19           17.   PROBATION MONITORING COSTS:

20           Respondent shall pay the costs associated with probation monitoring each and every year  
21   of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs  
22   shall be payable to the Medical Board of California and delivered to the Board or its designee  
23   no later than January 31 of each calendar year.

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Dated: 10-25-12

KAMALA D. HARRIS  
Attorney General of California  
JOSE R. GUERRERO  
Supervising Deputy Attorney General

RUSSELL W. LEE  
Deputy Attorney General  
*Attorneys for Complainant*

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## **Exhibit A**

**Accusation No. 12-2011-215239**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 RUSSELL W. LEE  
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7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO August 30, 2012  
BY: [Signature] ANALYST

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 12-2011-215239

13 **DALE GENJI ANDO, M.D.**

14 **159 Venado Corte**  
**Walnut Creek, CA 94598**

ACCUSATION

15 **Physician and Surgeon No. G 50003**

16 Respondent.

19  
20 Complainant alleges:

21 PARTIES

- 22 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity  
23 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
- 24 2. On or about June 1, 1983, the Medical Board of California issued Physician and  
25 Surgeon's Certificate Number G 50003 to DALE GENJI ANDO, M.D. ("Respondent" or "Dr.  
26 Ando"). The Physician and Surgeon Certificate was in full force and effect at all times relevant  
27 to the charges brought herein and will expire on March 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board. . ."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states:

"The Division of Medical Quality<sup>1</sup> shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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<sup>1</sup> California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et. seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1       "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
2 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical  
3 Practice Act].

4       "(b) Gross negligence.

5       "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
6 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
7 the applicable standard of care shall constitute repeated negligent acts.

8       "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for  
9 that negligent diagnosis of the patient shall constitute a single negligent act.

10       "(2) When the standard of care requires a change in the diagnosis, act, or omission that  
11 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
12 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
13 applicable standard of care, each departure constitutes a separate and distinct breach of the  
14 standard of care.

15       "(d) Incompetence.

16       "(e) The commission of any act involving dishonesty or corruption which is substantially  
17 related to the qualifications, functions, or duties of a physician and surgeon.

18       "(f) Any action or conduct which would have warranted the denial of a certificate."

19       7. Section 2239 of the Code provides that:

20       "(a) The use or prescribing for or administering to himself or herself, of any controlled  
21 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
22 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
23 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
24 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
25 consumption, or self-administration of any of the substances referred to in this section, or any  
26 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
27 conclusive evidence of such unprofessional conduct.

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1 (b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
2 deemed to be a conviction within the meaning of this section. The Division of Medical Quality  
3 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing  
4 may order the denial of the license when the time for appeal has elapsed or the judgment of  
5 conviction has been affirmed on appeal or when an order granting probation is made suspending  
6 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
7 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
8 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
9 information, or indictment.”

10 8. Section 820 of the Code states in relevant part as follows:

11 “Whenever it appears that any person holding a license, certificate or permit under this  
12 division or under any initiative act referred to in this division may be unable to practice his or her  
13 profession safely because the licentiate's ability to practice is impaired due to mental illness, or  
14 physical illness affecting competency, the licensing agency may order the licentiate to be  
15 examined by one or more physicians and surgeons or psychologists designated by the agency.  
16 The report of the examiners shall be made available to the licentiate and may be received as direct  
17 evidence in proceedings conducted pursuant to Section 822.”

18 9. Section 822 of the Code states:

19 “If a licensing agency determines that its licentiate's ability to practice his or her profession  
20 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the  
21 licensing agency may take action by any one of the following methods:

22 “(a) Revoking the licentiate's certificate or license.

23 “(b) Suspending the licentiate's right to practice.

24 “(c) Placing the licentiate on probation.

25 “(d) Taking such other action in relation to the licentiate as the licensing agency in its  
26 discretion deems proper.

27 “The licensing agency shall not reinstate a revoked or suspended certificate or license  
28 until it has received competent evidence of the absence or control of the condition which caused

1 its action and until it is satisfied that with due regard for the public health and safety the person's  
2 right to practice his or her profession may be safely reinstated."

3 10. Section 23152 of the Vehicle Code states, in pertinent part:

4 "(a) It is unlawful for any person who is under the influence of any alcoholic beverage or  
5 drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

6 "(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in  
7 his or her blood to drive a vehicle."

8 11. Section 23572 of the Vehicle Code states, in pertinent part:

9 "(a) If any person is convicted of a violation of Section 23152 and a minor under 14 years  
10 of age was a passenger in the vehicle at the time of the offense, the court shall impose the  
11 following penalties in addition to any other penalty prescribed:

12 "(1) If the person is convicted of a violation of Section 23152 punishable under Section  
13 23536, the punishment shall be enhanced by an imprisonment of 48 continuous hours in the  
14 county jail, whether or not probation is granted, no part of which shall be stayed."

15 "(2) If a person is convicted of a violation of Section 23152 punishable under Section  
16 23540, the punishment shall be enhanced by an imprisonment of 10 days in the county jail,  
17 whether or not probation is granted, no part of which may be stayed.

18 "(3) If a person is convicted of a violation of Section 23152 punishable under Section  
19 23546, the punishment shall be enhanced by an imprisonment of 30 days in the county jail,  
20 whether or not probation is granted, no part of which may be stayed.

21 "(4) If a person is convicted of a violation of Section 23152 which is punished as a  
22 misdemeanor under Section 23550, the punishment shall be enhanced by an imprisonment of 90  
23 days in the county jail, whether or not probation is granted, no part of which may be stayed.

24 "(b) The driving of a vehicle in which a minor under 14 years of age was a passenger  
25 shall be pled and proven.

26 "(c) No punishment enhancement shall be imposed pursuant to this section if the person is  
27 also convicted of a violation of Section 273a of the Penal Code arising out of the same facts and  
28 incident.

12. Section 273a of the Penal Code states, in pertinent part:

“(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.”

“(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.”

### FIRST CAUSES FOR DISCIPLINARY ACTION

(Use of Alcohol In Dangerous Manner)

13. On or about May 5, 2011, Dr. Ando submitted a Physician Reporting form pursuant to Business and Professions Code section 802.1 indicating that he had pled no contest to driving under the influence. Dr. Ando indicated that he had received probation for 4 years, special terms and conditions and 18 months supervised probation and fines.

14. Subsequent documentation obtained by the Medical Board indicated that on or about January 21, 2011, in the Superior Court of California, County of San Mateo, Case No. NM399540, the San Mateo County District Attorney filed a misdemeanor criminal complaint against Dr. Ando alleging, on or about December 19, 2010, as follows:

“Count: 001, On or about 12/19/2010, Dale Genji Ando did willfully and unlawfully, while under the influence of an alcoholic beverage or a drug or under their combined influence, drive a vehicle, in violation of California Vehicle Code section 23152(a), a misdemeanor.



1       “Count: 002, On or about 12/19/2010, Dale Genji Ando did willfully and unlawfully, while  
2 having 0.08 percent or more, by weight, of alcohol in his/her blood, drive a vehicle, in violation  
3 of California Vehicle Code section 23152(b), a misdemeanor.

4       “It is further alleged that the defendant Dale Genji Ando had a blood alcohol content of  
5 0.15 percent or higher within the meaning of California Vehicle Code section 23578.

6       “It is further alleged that at the time of the commission of the above offense, that a child  
7 under the age of 14, Diana A., was a passenger in the vehicle operated by defendant, Dale Genji  
8 Ando who is punishable under Vehicle Code section 23536, in violation of California Vehicle  
9 Code section 23572(a)(1).

10       “Count: 003, on or about 12/19/2010, Dale Genji Ando was the person having the care or  
11 custody of a child(ren) listed below who, under circumstances or conditions other than those  
12 likely to produce great bodily harm or death, did willfully and unlawfully cause or permit the  
13 person and health of such child(ren) to be endangered, in violation of Penal Code section 273a(b),  
14 a misdemeanor. The child(ren) victim(s) is/are: Diana A.”

15       15. On or about April 8, 2011, in the Superior Court of California, County of San Mateo,  
16 Case No. NM399540, Dr. Ando pled nolo contendere to Count 002 with Special Allegations 1  
17 and 2 of Count 002 specifically admitted. At the request of the San Mateo County District  
18 Attorney, the Superior Court dismissed all remaining Counts.

19       16. Pursuant to Dr. Ando’s plea, the imposition of sentence was suspended, and he was  
20 sentenced to 30 days in County Jail, and placed of Supervised Probation for 18 months, followed  
21 by Court Probation for 30 months, for a total of 48 months. His probationary terms included, but  
22 were not limited to, the following:

- 23           A. Enroll in a First Offender Program for DUI related violations;
- 24           B. Not drive with any alcohol in his blood during probation;
- 25           C. May not enter bars or liquor stores;
- 26           D. Must abstain from the use or possession of alcoholic beverages;
- 27           E. Submit to alcohol use test when requested by Probation or Peace Officer;
- 28           F. No refusal of chemical tests if arrested for DUI.

1 17. A police report obtained from the San Bruno Police Department indicated the  
2 following:

3 A. On Sunday, December 19, 2010, at 2128 hours, Officer J. Pasero observed a  
4 vehicle, without its headlights on, run a stop sign. The officer followed the vehicle and observed  
5 it swerving left and right within the lane and at one point the vehicle nearly struck a parked truck.  
6 The officer pulled the driver over and made contact with the male driver. Upon contact, the  
7 officer could smell an odor of an alcoholic beverage coming from his breath and person. The  
8 driver's eyes were bloodshot and watery and his speech was slurred. There was a 7 year old  
9 female in the front passenger seat who was later identified as the driver's daughter. The driver's  
10 wife was seated in the rear passenger side seat of the vehicle. The driver was asked to exit the  
11 vehicle and identified himself via his driver's license as Dale Genji Ando. The officer  
12 administered two P.A.S. tests. Dr. Ando blew a .22 BAC at 2146 hours and a .21 BAC at 2148  
13 hours. Dr. Ando was arrested for DUI at 2147 hours. Dr. Ando requested a blood test. The  
14 report indicated that Dr. Ando stated that he had drunk 4 - 6 glasses (4 ounces each) of wine  
15 while on an airplane trip back from Orlando, Florida.

16 18. Dr. Ando is subject to disciplinary action for unprofessional conduct pursuant to  
17 Sections 2234 and 2239 of the Code in that he used alcoholic beverages, to the extent, or in such a  
18 manner as to be dangerous or injurious to himself, his daughter, his wife, or to the public.

## 19 SECOND CAUSES FOR DISCIPLINARY ACTION

### 20 (Impairment Due To Use of Alcohol)

21 19. On February 15, 2012, Dr. Ando participated in a physician conference at the  
22 Pleasant Hill District Office of the Medical Board. Regarding the events leading up to his DUI  
23 arrest, Dr. Ando indicated the following:

24 A. He and his wife and daughter were flying back from a business trip and the  
25 flight was delayed for 5 - 6 hours. They had been upgraded to business class and were given free  
26 drinks. He drank too much and forgot how much wine he drank. Once they arrived at the San  
27 Francisco Airport, he was stopped by the police as he left the parking area. He had been driving  
28 without his lights on. His car has lights which come on automatically but that feature had been

1 turned off. The police took him to a place called First Chance to sleep it off and they took his  
2 wife and daughter to a hotel. He must have blacked out because he does not remember how much  
3 he had to drink. If he drinks more than 5 or 6 glasses of alcohol he might not remember what  
4 happened. He remembers what happened after the police stopped him. He had a blood alcohol  
5 level of .24. His wife does not have a driver's license which is why she did not drive.

6 B. There were a lot of consequences from his arrest. He believes that if he starts  
7 drinking he can't control it. In retrospect, he was and is an alcoholic and will always have to stay  
8 away from alcohol. In order to avoid relapse, he has a sponsor and he will continue to see a  
9 counselor on a monthly basis.

10 20. Dr. Ando agreed to take a urine drug screen and signed the consent form for the test.  
11 Dr. Ando stated that he took two Benadryl last night and one this morning for his allergies. Dr.  
12 Ando indicated that his last drink of alcohol was on December 19, 2010. Medical Board  
13 Investigator Aaron Adicoff assisted with the collection of the specimen and made sure that Dr.  
14 Ando washed his hands before the test. The specimen was placed in a sealed container and then  
15 sent to Medtox Laboratories for analysis.

16 21. On February 19, 2012, Investigator Adicoff received from MedTox the report of Dr.  
17 Ando's drug test. Dr. Ando tested positive for Ethyl Alcohol and for Ethyl Glucuronide (ETG).

18 22. On March 12, 2012, the Medical Board received a letter from Dr. Ando explaining  
19 why he tested positive for alcohol on his drug test. He indicated that he had, in fact, lapsed from  
20 sobriety and consumed alcohol at a neighbor's house on February 14, 2012, the day before the  
21 physician conference and urine drug screen.

22 23. On or about May 11 and May 30, 2012, Dr. Ando underwent a voluntary mental  
23 examination by a Medical Board appointed psychiatrist.

24 24. The examining psychiatrist thereafter reported that Dr. Ando's ability to practice  
25 medicine is impaired due ethanol dependence and that Dr. Ando is in need of continuing  
26 psychiatric treatment and monitoring in order to practice safely.

27  
28 ///

25. Dr. Ando is further subject to disciplinary action for unprofessional conduct pursuant to Sections 2234 and 2239 of the Code in that he used alcoholic beverages, to the extent, or in such a manner that such use impairs his ability to practice medicine safely.

26. Dr. Ando is further subject to disciplinary action pursuant to Section 822 of the Code in that Dr. Ando's ability to practice medicine is impaired due to ethanol dependence and Dr. Ando is in need of continuing psychiatric treatment and monitoring in order to practice safely.

## PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician and Surgeon Certificate Number G 50003, issued to DALE GENJI ANDO, M.D..

2. Revoking, suspending or denying approval of DALE GENJI ANDO, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. Ordering DALE GENJI ANDO, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

August 30, 2012  
DATED: \_\_\_\_\_

~~LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant~~